

1 DAYLE ELIESON
2 United States Attorney
3 District of Nevada
4 KILBY MACFADDEN
5 Assistant United States Attorney
6 501 Las Vegas Boulevard So., Suite 1100
7 Las Vegas, Nevada 89101
8 Phone: (702) 388-6336
9 Fax: (702) 388-5087
10 kilby.macfadden@usdoj.gov

11 *Representing the United States of America*

12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA
14 -oOo-

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 vs.

18 ROBERT HARVEY,
19 ALEJANDRO INCERA, and
20 LESLIE KALYN,

21 Defendants.

Case No.: 2:18-cr-00169-JCM-NJK

**PROPOSED COMPLEX CASE
ORDER (STIPULATION)**

22 Pursuant to Local Rule 16-1(a), the United States, by and through the
23 undersigned, and Defendants, by and through undersigned counsel, submit this
24 Proposed Complex Case Schedule as follows:

1. Complex Case. The parties stipulate that this is a complex case
within the meaning of that term under Title 18, United States Code, Section
3161(h)(7)(B)(i) and (ii), in that the failure to grant such a continuance of such
proceeding would result in a possible miscarriage of justice and in that the
nature of the prosecution is such that it is unreasonable to expect adequate trial

1 preparation within the time limits prescribed by the Speedy Trial Act.

2 a. The discovery in the matter is more than 10,000 pages of
3 records. The records may need to be reviewed by defense experts and this can
4 take a significant amount of time due to the complex nature of the subject
5 matter.

6 b. The fraud and scheme alleged in the Indictment is complex
7 because it involves patient's Medicaid and Medicare data, as well as private
8 insurance records and financial data that will take significant time for the
9 defense, including the defense experts, to review and adequately prepare for
10 pretrial motions and trial.

11 2. Trial Date. The parties stipulate that they seek to vacate the
12 current trial setting for this matter on July 30, 2018, and set the matter for a
13 trial setting on or about September 9, 2019, with a calendar call on September
14 4, 2019. The United States anticipates, at this time, it will need no more than
15 three weeks to present its case-in-chief¹.

16 3. Excluded Time. The parties stipulate that all time from the entry
17 of Defendant's plea in this case until the trial of this matter is excluded under
18 Title 18, United States Code, Section 3161(h)(7)(A) as the ends of justice
19
20
21

22 ¹ The parties have conferred with the Honorable James C. Mahan's Chambers.
23 Judge Mahan has a trial stack available for the dates and has agreed to these
24 proposed dates. Upon entry of this order, if this Court requests, the parties will
submit a separate Stipulation to Continue Trial Dates to Judge Mahan
reflecting these agreed upon dates, for his approval.

1 outweigh the interests of the public and defendant in a speedy trial.

2 4. Pretrial Motions. The parties stipulate that:

3 A. They shall have to and including June 26, 2019, within
4 which to file any and all pretrial motions;

5 B. They shall have twenty-one (21) days after the filing of a
6 pretrial motion within which to file any and all responsive pleadings;

7 C. They shall have seven (7) days after the filing of a
8 responsive pleading within which to file and all replies to dispositive motions.

9 5. The Parties' Discovery Obligations

10 A. The United States shall begin providing its Rule 16
11 disclosures to the defendant within forty-five (45) days of arraignment, and
12 consistent with its ongoing discovery obligations, turn over additional materials
13 as they become available.

14 B. Fifty (50) days before trial, the parties will exchange any
15 and all reciprocal discovery and expert notifications requested by Fed. R. Crim.
16 P. 16. By being bound to this schedule, all parties will have been deemed to
17 have requested the other parties' discovery that is subject to disclosure under
18 this rule, thus triggering all parties' disclosure obligations under Fed. R. Crim.
19 P 16(a)(1), (b)(1), and (c).

20 C. The United States is not required to disclose *Jencks*
21 material until after the government witness testifies on direct examination. 18
22 U.S.C. § 3500(b). Nonetheless, in the interest of efficiency, the United States
23
24

1 will consent to disclose *Jencks* materials no later than forty-five (45) days before
2 trial, except: (1) with permission of the Court, for good cause shown; and (2)
3 with the caveat that the United States does not consent to any remedy for any
4 violation of the forty-five (45) day disclosure deadline that would preclude it
5 from calling a witness at trial (that is, it reserves the right to argue to the Court
6 that exclusion of the witness is not a proper remedy). Conversely, the defense
7 reserves the right to argue that witness exclusion is the appropriate remedy.

8 WHEREFORE, the parties respectfully request that the Court enter a
9 Scheduling Order addressing these issues and such other issues, as the Court
10 deems appropriate.

11 DATED this 15th day of June, 2018.

12 Respectfully Submitted,

For the United States:

13 DAYLE ELIESON
14 United States Attorney

15 /s/ Kilby Macfadden
16 KILBY C. MACFADDEN
Assistant United States Attorney

17 For Defendant Robert Harvey
18 /s/ Maggie Lambrose
MAGGIE LAMBROSE
19 Assistant Federal Public Defender

20 For Defendant Alejandro Incera
21 /s/ Robert Draskovich
ROBERT DRASKOVICH

22 For Defendant Leslie Kalyn
23 /s/ Karen A. Connolly
KAREN A. CONNOLLY

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

-oOo-

5
6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 vs.

9 ROBERT D. HARVEY,
10 ALEJANDRO INCERA, and
LESLIE KALYN,

11 Defendants.
12

Case No.: 2:18-cr-0169-JCM-NJK

COMPLEX CASE ORDER

13 This matter coming before the Court on the parties' Proposed Complex
14 Case Schedule, the premises therein considered, and good cause showing, the
15 Court HEREBY ORDERS as follows:

16 1. That this case is designated as a complex case pursuant to LCR
17 16-1(a). All time from the date of arraignment and plea until such time as this
18 Court shall rule otherwise is hereby excluded for purposes of speedy trial
19 calculations, pursuant to 18 U.S.C. § 3161(h)(7)(A) and (h)(7)(B)(i)-(ii).

20 2. This Court concludes that the ends of justice served by the
21 proposed exclusion of time outweigh the best interest of the public and the
22 defendants in a speedy trial. This case is complex, due to the breadth of the
23 discovery and subject matter, that it is unreasonable to expect adequate
24

1 preparation for pretrial proceedings and the trial itself within the otherwise
2 applicable time limits. The Court further concludes that denial of this exclusion
3 and the additional time it would bring to prepare would likely result in a
4 miscarriage of justice.

5 a. The discovery in the matter is more than 10,000 pages of
6 records. The records need to be reviewed by defense experts and this can take a
7 significant amount of time due to the complex nature of the subject matter.

8 b. The fraud and scheme allgeded in the Indictment is complex
9 because it involves patient's Medicaid and Medicare data, as well as private
10 insurance records and financial data that will take significant time for the
11 defense, including the defense experts, to review and adequately prepare for
12 pretrial motions and trial.
13
14
15
16

17 4. Excluded Time. The parties stipulate that all time from the entry
18 of Defendant's plea in this case until the trial of this matter is excluded under
19 Title 18, United States Code, Section 3161(h)(7)(A) as the ends of justice
20 outweigh the interests of the public and defendant in a speedy trial.

21 5. Pretrial Motions. The parties shall have:

22 A. To and including June 29, 2019, within which to file any and
23 all pretrial motions and notices of defense;
24

1 B. To and including twenty-one (21) days after the filing of a
2 pretrial motion within which to file any and all responsive pleadings;

3 C. To and including seven (7) days after the filing of a
4 responsive pleading within which to file and all replies to pretrial motions.

5 6. The Parties' Discovery Obligations

6 A. The United States shall begin providing its Rule 16
7 disclosures to the defendant within forty-five (45) days of arraignment, and
8 consistent with its ongoing discovery obligations, turn over additional materials
9 as they become available.

10 B. The defendants' Rule 16 disclosures, including, specifically,
11 disclosures related to expert witness testimony, should be made immediately,
12 or, in all events, no later than on or before fifty (50) days before the date set for
13 trial by this Court, in order to allow for sufficient trial preparation.

14 C. The United States is not required to disclose *Jencks*
15 material until after the government witness testifies on direct examination. 18
16 U.S.C. § 3500(b). Nonetheless, in the interest of efficiency, the United States
17 will disclose Jencks material no later than forty-five days before trial, except with
18 the permission of the Court, for good cause shown.

19 IT IS SO ORDERED.

20 DATED: June 19, 2018

21
22
23 
24 _____
NANCY J. KOPPE
United States Magistrate Judge